OSHA Withdrawal of Proposed TB Standard

TB Notes Newsletter
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In 1993, the Occupational Safety and Health Administration (OSHA) was petitioned by the Labor Coalition to Fight TB in the Workplace (a coalition that included the American Federation of State, County, and Municipal Employees [AFSCME], the Service Employees International Union [SEIU], as well as some local organizations) to develop an occupational health standard against TB transmission. The Coalition requested a permanent standard that would protect against the workplace transmission of TB to workers caring for or overseeing persons with active TB disease. OSHA initially concluded that, for some workers in some settings, a significant risk of occupational transmission of TB exists and began developing a proposed standard.

On October 17, 1997, OSHA published its proposed rule for occupational exposure to TB (62 FR 54160). The proposal would have required employers to protect workers using infection control measures consistent with those recommended by CDC and known to be highly effective in reducing or eliminating work-related TB transmission. The measures include promptly identifying individuals with infectious TB disease, isolating persons with infectious TB in appropriately ventilated rooms, using respiratory protection in certain situations, and providing skin testing and training for employees.

In January 1998, OSHA revised and updated its 1971 respiratory protection standard, 29 CFR 1910.134.[1] However, the agency decided not to require compliance with the updated standard during the rulemaking process. Instead, OSHA redesignated the old standard as 29 CFR 1910.139,[2] and permitted temporary compliance with this old standard throughout the rulemaking proceedings.

After the close of the written comment period for the proposed standard, OSHA held informal public hearings in Washington, DC, Los Angeles, CA, New York City, NY, and Chicago, IL. The posthearing comment period closed on October 5, 1998. On June 17, 1999, OSHA reopened the rulemaking record for 90 days in order to submit the Agency's report on homeless shelters, as well as certain other documents that had become available after the close of the posthearing comment period. During this limited reopening of the rulemaking record, OSHA also requested comments and data on the Agency's preliminary risk assessment in order to obtain the best, most recent data and provide the most accurate estimates of the occupational risk of TB.

At the request of Congress, the Institute of Medicine of the National Academy of Sciences (IOM) conducted a study of OSHA's proposal and of the need for a TB standard. That study, completed in January 2001, determined that an OSHA standard was needed to maintain national TB rates at their current levels among health care workers and other employees and to prevent future outbreaks of multidrug-resistant TB and other forms of TB among these workers. Based on IOM research and new information on the changing epidemiology of TB, the report posed questions regarding the relationship between OSHA regulations and CDC guidelines. OSHA reopened the record to obtain comments on the IOM study, the draft final risk assessment, and the peer reviewers' comments on the risk assessment.

In May 2003, OSHA announced its decision to withdraw the proposed TB rule.[3] A number of factors were given for the decision, including a broad range of CDC and community initiatives that

have resulted in a steadily declining rate of TB since OSHA began work on the proposal in 1993. Hospitals, the settings in which workers are most likely to have the highest risk of exposure to TB bacteria, have come into substantial compliance with federal guidelines for preventing the transmission of TB (particularly CDC's 1994 infection control guidelines).[4] Overall reductions in TB mean that all workers are now much less likely to encounter infectious TB patients in their workplaces. In addition, OSHA concluded that a standard would not be likely to result in a meaningful reduction in workplace exposure to individuals with undiagnosed TB, because workers are often unable to identify these undiagnosed TB cases quickly enough for isolation procedures and other precautions to be implemented before exposure occurs.

However, OSHA acknowledged that continued vigilance is necessary to maintain the current low risk of TB transmission in the health-care setting. OSHA committed to provide guidance to workplaces with less medical expertise and fewer resources than hospitals, and to use cooperative relationships with employers, public health experts, and other government agencies to promote TB control. OSHA announced it would continue to enforce the General Duty Clause of the OSHA Act (the 1970 Act that created OSHA as well as NIOSH, CDC's National Institute for Occupational Safety and Health) and relevant existing standards in situations where employers' failure to implement available precautions exposes workers to the hazard of TB infection.

OSHA has now withdrawn its 1997 proposed rule concerning occupational exposure to TB.[5,6] The revocation was effective as of December 31, 2003. At the same time, it also withdrew the respiratory protection standard for TB, 29 CFR 1910.139, that had been in effect during the rulemaking process. With the termination of the rulemaking, OSHA is now applying the standard that was revised and updated in 1998, 29 CFR 1910.134.

What does this mean for health care workers? Probably the main implication is the change in the respiratory protection standard. As described above, health care workers had been covered under temporary respirator regulations for TB (29 CFR 1910.139) during the rulemaking process, and these regulations have now been revoked. Employers must now comply with the general industry respirator regulations (29 CFR 1910.134). This means that employers of health care workers exposed to TB must develop a comprehensive respiratory protection program. The program should include assignment of responsibility; standard operating procedures; medical evaluation of health care workers; training, selection, annual fit testing, and inspection and maintenance of respirators; and program evaluation. You can find further information and details in OSHA's Federal Register announcements (see references 3, 5, and 6 below, particularly 6).

Reference: TB Notes Newsletter; No. 1, 2004

1. 29 CFR 1910.134
2. 29 CFR 1910.139
3. Federal Register. 2003 May 27; Volume 68: 30588-30589; **1827. Occupational Exposure to Tuberculosis.** U.S. Department of Labor, OSHA.
4. CDC. Guidelines for preventing the transmission of *Mycobacterium tuberculosis* in health-care facilities, 1994. *MMWR* 1994; 43 (No. RR-13).
5. Federal Register. 2003 Dec 31; Volume 68: 75767-75775. **Occupational Exposure to Tuberculosis; Proposed Rule; Termination of Rulemaking Respiratory Protection for M. Tuberculosis.** U.S. Department of Labor, OSHA.
6. Federal Register. 2003 Dec 31; Volume 68: 75776-75780. **Respiratory Protection For M. Tuberculosis – Final Rules.** U.S. Department of Labor, OSHA.